



REPUBLIC OF KENYA



**In re Estate of Hiram Wainaina Musa Muthuu alias Hiram Wainaina Musa (Deceased)
(Succession Cause 483 of 2006) [2025] KEHC 1334 (KLR) (Family) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1334 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

SUCCESSION CAUSE 483 OF 2006

EKO OGOLA, J

FEBRUARY 27, 2025

IN THE MATTER OF

JOYCE NYAMBURA WAINAINA 1ST APPLICANT

WILLIAM WAWERU MUSA 2ND APPLICANT

RULING

1. The summons for rectification before the court is dated 30th January 2022. The applicants pray that the Certificate of Confirmation of Grant issued on 12th February 2007 be rectified to include Nairobi/Block 120/250 (Orig. part of LR No. 6823) and Nairobi/Block 120/251. The applicants further pray that the said parcels be registered in the name of William Waweru Musa to get (1/3 of shares out of the said land parcels) the widow Joyce Nyambura Wainaina (1/3 of shares out of the said land parcels) and to have a life interest and to hold in trust for the children in equal shares namely Erick Kibugi Wainaina, Rosemary Wanjiku Wainaina, Moses Ngahu Wainaina, and Ian Ndugire Wainaina, Haggah Wambui Muthuo, William Waweru Musa, Agnes Njeri Muthuo, and Julius Macharia Muthuu on their own behalf (1/3 of shares out of the said land parcels) and in trust for all the beneficiaries in equal shares namely Rosemary Wanjiku Muthu, Ronah Nyambura Munyinyi and Peter Gicharu Muthuo.
2. Rectification of grants is provided for in Section 74 of the *Law of Succession Act*, and Rule 43(1) of the *Probate and Administration Rules*. Section 74 provides as follows:

“74. Errors may be rectified by court:

Errors in names and descriptions, or in setting forth the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”



3. Rule 43(1) provides as follows:

“Where the holder of a grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time or place of death of the deceased or, in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was made.”

4. From the language of section 74 and Rule 43(1), the scope of rectification of grants of representation is limited to errors in names and descriptions of property. The inclusion of assets of the deceased does not fall within the meaning of the aforementioned provisions.

5. If there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be effected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant.

6. However, this Court is still clothed with jurisdiction to issue orders that will meet the end of justice. Rule 73 of the *Probate and Administration Rules* provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

7. The upshot is that the Summons for Rectification dated January 30, 2022 is allowed. The Certificate of Confirmation of Grant be rectified as prayed. Costs be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025

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E.K. OGOLA

JUDGE

In the presence of:

N/A for the Applicants

Ms Gisiele M court Assistant

E.K. OGOLA P

